

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

MICAH RUFFIN,

#128797 PETITIONER

VS.

NO.: 5:11cv66-DCB-JMR

DANNY SCOTT

RESPONDENT

Order Adopting Report and Recommendation

This cause is before the Court on Petitioner's objections to Chief Magistrate Judge's Report and Recommendation that the Respondent's Motion to Dismiss Petitioner's § 2254 Motion should be granted. Having considered said Report and Recommendation, the Petitioner's objections thereto, applicable statutory and case law, and being otherwise fully advised in the premises, the Court adopts the recommendation of the magistrate judge.

Petitioner's state court conviction became final on January 21, 2009, ninety (90) days after the Mississippi Supreme Court denied his appeal. See Roberts v. Cockrell, 319 F.3d 690 (5th Cir. 2003). Thus, he had until January 21, 2010 to file a § 2254 Motion under the AEDPA. While the time to file his § 2254 was running, he submitted a PCR application to the Mississippi Supreme Court on December 3, 2009, which tolled the one-year deadline. 28 U.S.C. § 2244(d)(2). The Mississippi Supreme Court denied his PCR application sixty-three (63) days later,¹ making his § 2254 Motion

¹ In the statement of the case, the R & R incorrectly states that the Mississippi Supreme Court denied Petitioner's application on December 9, 2009, instead of February 4, 2010, but

due sixty-three days after January 21, 2010. Therefore, Petitioner's motion should have been filed on or before March 25, 2010. Petitioner filed for a writ of habeas corpus on April 27, 2011, well past that deadline, and therefore his petition is barred by the AEDPA's statute of limitations.

Accordingly,

The Court **HEREBY ADOPTS** the Report and Recommendation [**docket entry no. 6**] of the magistrate judge.

IT IS FURTHER HEREBY ORDERED that the Respondent's Motion to Dismiss [**docket entry no. 4**] is **GRANTED**.

SO ORDERED, this the 10th day of February, 2012.

/s/ David Bramlette

UNITED STATES DISTRICT JUDGE

relies on the correct date, February 4, 2010, in its analysis.